

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-v-

AARON YOUNG,

Defendant.


18-CR-834-08 (PAE)

ORDER

PAUL A. ENGELMAYER, District Judge:

As requested in the attached letter, the Court appoints Alessandria DeBlasio as counsel for defendant Aaron Young, pursuant to the District's CJA plan, for the limited purpose of representing Mr. Young in connection with his submission of an application for compassionate release. The Government's response to that application will be due two weeks after it is filed

SO ORDERED.



PAUL A. ENGELMAYER
United States District Judge

Dated: January 26, 2022
New York, New York

ALESSANDRA DeBLASIO
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299 BROADWAY, SUITE 1803
NEW YORK, NY 10007
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January 25, 2022

By Electronic Mail

Judge Paul A. Engelmayer
U.S. District Court for the
Southern District of New York
40 Centre Street, Room 2201
New York, NY 10007
EngelmayerNYSDChambers@nysd.uscourts.gov

Re: Request for CJA Appointment in *United States v. Aaron Young*, 18-cr-834-8

Dear Judge Engelmayer:

I write to respectfully request that Your Honor appoint me to represent Defendant Aaron Young pursuant to the Criminal Justice Act (“CJA”), *nunc pro tunc*, in criminal matter 18-cr-834-8, for the limited purpose of seeking compassionate release. I entered a Notice of Appearance in this case on January 6, 2022.

I am a member of the CJA panel of the U.S. Court of Appeals for the Second Circuit, which appointed me to represent Mr. Young on December 23, 2019, following his conviction in 18-cr-834-8 (PAE). *See* Appointment Order, enclosed.

In representing Mr. Young on appeal, I became very familiar with the district court proceedings of the entire criminal case, reviewing the trial transcript of two of his co-defendants, all relevant and available documents relating to co-defendant guilty pleas, as well as all sentencing filings of the eight co-defendants whom this Court sentenced prior to Mr. Young’s appeal. For the appeal, I spent a total of 280 hours working on Mr. Young’s case.

The Hon. Paul A. Engelmayer
January 25, 2022
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I seek appointment now because Mr. Young developed a measure of trust in me during the course of the appeals process and asked me to file a compassionate release motion on his behalf. *See* Young Corrlinks, enclosed. A similar situation arose this past year when the Honorable Kimba M. Wood appointed me CJA counsel in criminal matter number 13-147, for the limited purpose of seeking compassionate release for Defendant Flor Soto, whom I had just represented on appeal. In that matter, counsel of record in the District Court consented; in this matter, I reached out to counsel Aaron Mysliwicz, who has similarly consented. (In addition, over the past 15 years, I have taken to trial a civil matter in this District and a RICO double homicide in the Eastern District of New York, and have handled many criminal cases resulting in guilty pleas in both Districts, albeit none pursuant to the CJA.)

I intend to file the motion in Defendant Young's criminal case, seeking compassionate release on two grounds. First, since his incarceration, Mr. Young has become a diabetic, which is a CDC-recognized underlying medical condition that increases the risk to his health should he contract COVID-19. More significantly, his diabetic condition is acute – requiring daily insulin injections and pills – on account of the Bureau of Prisons' ("BOP") failure to test his glucose levels during the first two years of incarceration, such that by the time the BOP discovered his diabetes, Mr. Young was critically ill, having temporarily lost much of his vision, among other symptoms. Given the limitations on the prison health system during COVID, inmates such as Mr. Young who suffer from *acute* cases of diabetes are at particularly high risk of harm due to recurring lock-downs and short staffing, which affect the regular and timely provision of their insulin injections.

Second, *following* Mr. Young's sentencing in this case for conspiracy to distribute heroin – based on a Guidelines range calculated for a quantity of *fentanyl analogue* – this Court made a finding at a co-defendant's sentencing that the amount of fentanyl analogue the conspiracy was responsible for was *unquantifiable*: "As to the gang's narcotics dealing[, . . . it] sold multi-kilogram quantities of heroin. It also sold fentanyl, although the trial record, as I said earlier, doesn't allow me to quantify quite how much." *See* excerpt of Sentencing Transcript of Co-Defendant Aljermiah Mack, p. 69 enclosed. Because this Court could not determine a quantity, it concluded that it must rely on the lower offense level indicated for *heroin* in calculating Co-defendant Mack's Guidelines range. *Id.* p. 14.

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The result was a sentence of 204 months for Mr. Mack (Criminal History VI), convicted at trial on the same count for which Mr. Young (Criminal History III) received 240 months after pleading guilty. (The Court also found when sentencing Mr. Mack that the four-level enhancement under § 2D1.1(13) for misrepresenting a substance containing fentanyl as heroin – which the Court earlier applied at Mr. Young’s sentencing – was *inapplicable* because it came into effect six months *after* the head of the conspiracy (who supplied both Mack and Young) became a cooperator. *See* Sent’g TR of Mack at 14-16.) The resulting disparity in the sentences of co-defendants Young and Mack – which was a factor not considered at Mr. Young’s sentencing – constitutes a factor under 18 U.S.C. § 3553(a) to be considered on a motion for compassionate release.

Because the issues involved in the anticipated motion for compassionate release are complex, and Mr. Young’s health issues and documented limited intellectual capacity prevent him from filing such a motion in a *pro se* capacity, he needs the assistance of counsel. Mr. Young previously qualified for appointed counsel under the CJA plan, and he remains indigent and without resources to retain an attorney. *See United States v. Cirineo*, 372 F. App’x 178, 179 (2d Cir. 2010) (summary order) (explaining that while “there is no statutory right to counsel under the Criminal Justice Act in connection with a § 3582(c) motion, [] the provision of counsel for such motions should rest in the discretion of the district court”) (citation omitted).

I thank Your Honor in advance for considering my appointment as counsel to Mr. Young under the CJA plan for the limited purpose of assisting Mr. Young’s anticipated motion for compassionate release and related matters.

Respectfully,



Alessandra DeBlasio

Enc. -2d Cir. Order (CJA appointment)

-Defendant Aaron Young’s Corrlinks message requesting appointment

-Transcript excerpts from the sentencing of Co-Defendant Aljermiah Mack

CC (w/ Enc.): Michael Longyear, Assistant U.S. Attorney

Jacob Warren, Assistant U.S. Attorney

**UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT**

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 23rd day of December, two thousand and nineteen.

United States of America,

Appellee USA,

v.

Kifano Jordan, AKA Shotti, Roland Martin,
AKA Ro Murda, Aaron Young,

Defendants - Appellants.

ORDER

Docket Nos. 19-3032(L), 19-3365(Con),
19-4070(Con)

Aaron Mysliwec moves to be relieved as counsel for Appellant Aaron Young.

IT IS HEREBY ORDERED that the motion to be relieved is GRANTED. Alessandra DeBlasio, 299 Broadway, Suite 1803, New York, NY 10007, is assigned as new counsel pursuant to the Criminal Justice Act, 18 U.S.C. § 3006A. Attorney DeBlasio is directed to review Local Rule 12.2 regarding the filing of Form B and Local Rule 31.2 regarding procedures for setting the filing dates for the submission of briefs.

For the Court:

Catherine O'Hagan Wolfe,
Clerk of Court

Alessandra DeBlasio

From: YOUNG AARON (86428054)
Sent Date: Friday, January 21, 2022 2:09 PM
To: ad@adeblasiolaw.com
Subject: RE: RE: law

Dear Ms.DeBlasio,

I would like you to represent me to file a compassionate release motion.you have been my CJA lawyer for the past years for my appeal and i would like you to continue.please ask the court to appoint you for me.if the court needs documents from me,let me know.I still have no resources and cannot afford to hire an attorney for my compassionate release on my crimial case 18-834.

Aaron Young

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

18 Cr. 834 (PAE)

5 ALJERMIAH MACK,

6 Sentence

7 Defendant.

-----x

8 New York, N.Y.
9 February 24, 2020
10 3:35 p.m.

11 Before:

12 HON. PAUL A. ENGELMAYER,

13 District Judge

14 APPEARANCES

15 GEOFFREY S. BERMAN

United States Attorney for the
Southern District of New York

16 MICHAEL LONGYEAR

17 JACOB E. WARREN

JONATHAN REBOLD

18 Assistant United States Attorneys

19 LOUIS V. FASULO

MICHAEL GIORDANO

20 ALEX STEPHEN HUOT

ELYAN SCHULMAN

21 Attorneys for Defendant

22 Also Present: Hannah Harney, Paralegal USAO

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1 to the quantity of fentanyl analogue that was within the scope
2 of Mack's conspiracy. That issue is for the Court to resolve
3 by a preponderance of the evidence.

4 Having reviewed the trial record, the Court cannot
5 reliably so find, although it is certainly a possibility. The
6 recorded prison calls to which the government has directed the
7 Court in which Mack and Cruz discussed drug quantities involved
8 heroin, not fentanyl. And while the record comfortably
9 supports a finding that at least some of the mixtures and
10 substances containing heroin that Mack possessed and
11 distributed also contained fentanyl, it does not offer guidance
12 to the Court as to the quantity of substances containing
13 fentanyl that Cruz sold in connection with the Nine Trey
14 narcotics conspiracy. It does not quantify sufficiently the
15 fentanyl sales that Cruz made in context in which the quantity
16 sold would have been reasonably foreseeable to his Nine Trey
17 coconspirator Mack for the Court to determine, other than by
18 speculation, that such quantities exceeded one kilogram.

19 It's unsurprising that the trial record is sparse on
20 this point. Given that the mandatory minimum charge here was
21 keyed to heroin, the evidence adduced at trial about drug
22 quantity understandably was keyed to heroin. For example, Cruz
23 testified that he sold Mack himself heroin on several
24 occasions. He testified to selling Mack heroin in specific
25 weights (150 grams, 200 grams, and 500 grams). He testified

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1 that Mack owed Cruz approximately \$9,000 for heroin that Mack
2 bought on consignment. There isn't any comparable testimony
3 about any particular fentanyl sale.

4 Accordingly, given the indeterminate record as to the
5 quantity of fentanyl and the jury's affirmative determination
6 attributing more than one kilogram of substances containing
7 heroin to Mack, the Court applies a base offense level keyed to
8 heroin sales of 30 under Section 2D1.1(c)(5).

9 Second, the Court holds, with Mack, that the
10 four-point fentanyl misrepresentation enhancement does not
11 apply. The government seeks this enhancement pursuant to
12 Section 2D1.1(b)(13), which states: "If the defendant
13 knowingly misrepresented or knowingly marketed as another
14 substance a mixture or substance containing fentanyl or a
15 fentanyl analogue, increase the offense level by four levels."

16 This provision is the result of a recent amendment to
17 the sentencing guidelines aimed at combating some of the worst
18 outcomes of the opioid crisis. The sentencing commission
19 explained, in providing a reason for the amendment, the
20 following:

21 "Because of fentanyl's extreme potency, the risk of
22 overdose death is great, particularly when the user is
23 inexperienced or unaware of what substance he or she is using.
24 To address this harm, the amendment adds a new specific offense
25 characteristic at Section 2D1.1(b)(13) to provide for a

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1 four-level increase whenever the defendant knowingly
2 misrepresented or knowingly marketed as another substance a
3 mixture or substance containing fentanyl or fentanyl analogue.
4 The commission determined that it is appropriate for
5 traffickers who knowingly misrepresent fentanyl or a fentanyl
6 analogue as another substance to receive additional punishment.
7 If an offender does not know the substance contains fentanyl or
8 a fentanyl analogue, the enhancement does not apply. The
9 specific offense characteristics includes a mens rea
10 requirement to ensure that only the most culpable offenders are
11 subjected to these increased penalties."

12 Crucially here, by its terms, this amendment was
13 effective as of November 1, 2018.

14 At trial, although the quantity of sales by Mack
15 personally of fentanyl was not established, Cruz testified that
16 Mack and Cruz discussed the fact that drugs Mack was selling
17 had "white spots" in it, which Mack new was fentanyl.
18 Transcript at 903. When Cruz told Mack that it was fentanyl,
19 Mack responded that he "didn't care" because Mack's customers
20 "still liked it." *Id.* And Mack continued to buy the mixture
21 in distribution quantities from Cruz thereafter. *Id.* at 904.
22 Thus, while Cruz and Mack marketed the product as heroin, they
23 both knew that it contained fentanyl. This was the entirety of
24 the evidence as to Mack's misrepresentation of a substance
25 containing fentanyl.

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1 Cruz also testified on direct examination that he
2 began cooperating with the government "around May 2018."
3 Transcript at 871. On redirect Cruz testified that after
4 May 2018, he did not engage in any drug deals or have any
5 drug-related conversations with Mack. See transcript at 1352.
6 Indeed, while Mack never withdrew from the narcotics
7 conspiracy, the record is devoid of any evidence that Mack
8 misrepresented a substance containing fentanyl after May 2018,
9 much less after the amendment's effective date of November 1,
10 2018.

11 The Court cannot comfortably, under these
12 circumstances, find that a guidelines enhancement that only
13 became effective six months later applies. Accordingly, the
14 Court does not apply the four-level enhancement for fentanyl
15 misrepresentation. However, however, Mack's dissembling to
16 customers at an earlier point so as to conceal that they were
17 buying fentanyl is a fact that the Court views as aggravating,
18 whatever the guideline effective date is. So while it doesn't
19 affect the calculation of the guideline range, it very much is
20 properly considered as relevant in the Court's broader
21 assessment of the Section 3553(a) factors, and the Court will
22 so consider it today.

23 Third, as to the two-level enhancement for possession
24 of a firearm in connection with the narcotics conspiracy,
25 pursuant to Section 2D1.1(b)(1), the Court agrees with Mack

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1 testimony. There doesn't seem to be any testimony which
2 refutes that during the course of the trial and then would say
3 that Mack was a beneficiary in any way of the drug dealing that
4 Cruz had been ongoing.

5 THE COURT: If your point is that Cruz had a drug
6 dealing operation that's independent of the gang, sure, but I'm
7 focusing really on what Cruz brought to the gang, which was
8 clearly some drug dealing that included both heroin and,
9 although the quantity is a little elusive, some fentanyl too.

10 MR. FASULO: Then we also have the testimony about Mel
11 Murda being the one that actually did recruit Cruz at the end
12 of the day, and we also had the testimony of the --

13 THE COURT: I credit both.

14 MR. FASULO: -- the line of conflict between Mel Murda
15 and my client, Mack.

16 THE COURT: Mr. Fasulo, you've had plenty of cases and
17 you know that human relations are complicated, and people who
18 are teammates and gang members also have fights. And that's
19 very much on display here, as in so many other gang cases. The
20 idea that Mel Murda, Jamel Jones, recruited Cruz is completely
21 consistent with the idea that your client recruited Cruz.
22 There doesn't have to be one GM; there can be an assistant GM.
23 The point is they're both responsible for that very important
24 and very damaging addition to the gang.

25 MR. FASULO: Yes, Judge, I understand that. I also

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1 was shooting back and forth in which you tried to have Jones
2 murdered. Fortunately, no one got shot, apparently, either on
3 the occasion when you pulled a gun while committing the robbery
4 or when your gang rival shot at you in retaliation, but that is
5 to some degree fortuitous. When you pull a gun on a violent
6 gang leader and rob him of his car, you are asking for mayhem
7 to break out, and you are very, very fortunate today, Mr. Mack,
8 that no one got shot or otherwise hurt as a result of the
9 violent crimes you either engaged in or helped bring about.

10 As to the gang's narcotics dealing, you were deeply
11 and personally involved in that. You personally recruited
12 Kristian Cruz to the gang. He was a prodigious supplier and
13 dealer of heroin and fentanyl, as you knew he would be. The
14 gang sold multi-kilogram quantities of heroin. It also sold
15 fentanyl, although the trial record, as I said earlier, doesn't
16 allow me to quantify quite how much.

17 You personally participated in some of those sales.
18 It goes without saying that as a drug dealer and as a leader in
19 a gang that sold heroin and fentanyl, you caused a lot of
20 damage to society. Fentanyl and heroin use destroys lives. It
21 destroys families. It destroys communities. It produces
22 addiction. It correlates with violence. By recruiting Cruz
23 and by encouraging drug dealing by Cruz, by participating in
24 drug dealing yourself, you caused such damage. Now, it is lost
25 to history what happened to the downstream users of the drugs

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300